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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,266	07/19/2001	Gary D. Jerdee	71163-03	1248

7590 12/01/2006
Mark L. Davis
P.O. Box 9293
Gray, TN 37615-9293

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/909,266	Applicant(s) JERDEE ET AL.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 22-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Appeal Brief filed on August 30, 2006, PROSECUTION IS HEREBY REOPENED. A new rejection is set forth below.

2. To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

3. A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 is drawn to a blend of ethylene methyl acrylate copolymer (EMA) and, in one embodiment, ethylene methyl acrylic acid copolymer. These two copolymers are merely different nomenclature for the same composition. Upon polymerization of the monomer methyl acrylic acid, said monomer becomes methyl acrylate. In other words, the scope of the claim includes a blend of EMA with itself, which is not a blend at all. Hence, the claim is indefinite.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,508,771 issued to Peoples, Jr. et al.

Applicant claims a carpet having from 50-100% polymeric material comprising a tufted consists essentially of a blend of an ethylene methyl acrylate copolymer (EMA) and at least one polymer selected from the group consisting of (a) low density polyethylenes (LDPE), (b) linear

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low density polyethylenes (LLDPE), (c) high density polyethylenes (HDPE), (d) ultra low density polyethylenes (ULDPE), (e) styrenic copolymers of butadiene, (f) styrenic copolymers of acrylonitrile, (g) styrenic copolymers of ethylene, (h) metallocene based PE's, (i) polyester, (j) ethylene acrylic acid copolymers, (k) ethylene methyl acrylic acid copolymers, (l) butyl acrylate copolymers, (m) ionomers, (n) polyamides, and (o) maleic anhydrides. Preferably, the adhesive is a blend of EMA and one of LDPE, LLDPE, HDPE, ULDPE, and metallocene based PE's.

Applicant also limits the adhesive to be a coextruded blend and to have a thickness of 0.001-0.050 inches. The carpet may also include additives such as fillers, flame retardants, odor reducing agents, scent enhancing agents, and UV protectors. The tufts of fibers, primary, and secondary backing materials may be made of polypropylene, polyester, acrylic, polyethylene, polyamide, wool, cotton, rayon, and combinations thereof.

Peoples discloses a thermoplastic carpet backing composition comprising copolymers of ethylene and unsaturated esters of lower carboxylic acids, such as vinyl esters and/or lower alkyl acrylates in admixture with olefinic elastomers and filler (abstract). The preferred elastomers include ethylene propylene copolymers (abstract). The lower alkyl acrylate may be a methyl acrylate (col. 7, lines 4-6). The thermoplastic backing layer may be applied directly to a tufted primary backing or may be applied over a pre-coat layer, which may be a copolymer of ethylene and a vinyl ester of a lower carboxylic acid, such as a EVA (col. 5, lines 12-34 and col. 9, line 67-col. 10, line 1). Additionally, a textile pad, or secondary backing, may be applied to the thermoplastic backing (col. 5, lines 38-43). Furthermore, another thermoplastic coating layer, such as an ethylene copolymer, may be applied between the thermoplastic backing layer and the secondary backing by way of co-extrusion with said thermoplastic backing layer (col. 10, lines

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14-22). The carpet may comprise face fibers of nylon, polyester, or polypropylene tufted into a primary backing of jute or polypropylene (col. 10, lines 23-33). The thickness of the thermoplastic backing layer may be 0.015-0.125 inches (col. 11, lines 19-29).

Hence, Peoples teaches the presently claimed invention with the exception of the polymer blended with the EMA. However, as noted above, the scope of the claim includes EMA blended with itself. As such, claims 1 and 23-26 are anticipated.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Alternatively, claims 1 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,508,771 issued to Peoples, Jr. et al. in view of DOW's *Expanding the Power of Elastomers and Metallocene Catalysts Initiate New Era In Polymer Synthesis*, by Chemical & Engineering News.

In the alternative, Peoples teaches the presently claimed invention with the exception of another polymer as recited in the claim blended with the EMA. Peoples teaches a polymer, which is blended with EMA, is an olefinic elastomer, preferably an ethylene propylene copolymer. However, many olefinic elastomers are also known to be at least metallocene based polyethylenes. For example, Dow's ENGAGE™ polymers are olefinic elastomers made by metallocene catalysts (i.e., INSITE™ technology). See DOW's *Expanding the Power of*

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Elastomers filed by applicant on May 22, 2006 and *Metallocene Catalysts Initiate New Era In Polymer Synthesis*, by Chemical & Engineering News, September 11, 1995. The *Metallocene* article establishes the date of said ENGAGE™ polymers, metallocene based ethylene copolymers to being 1993. Said article also teaches metallocene based LLDPE's. Said *Metallocene* and DOW articles also establish the many advantages of said polymers. Thus, it would have been readily obvious to one of ordinary skill in the art to substitute one of the well known thermoplastic olefinic elastomers made by metallocene catalysts, such as ENGAGE™ polymers or the LLDPE for the olefinic elastomers of the Peoples invention since said metallocene based elastomers are known to have superior properties and are known to be recyclable. Therefore, claims 1 and 22-26 are rejected as being obvious over the cited prior art.

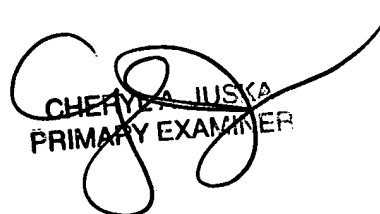
Conclusion

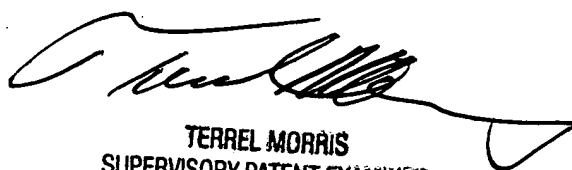
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL JUSKA
PRIMARY EXAMINER


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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